IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 236 of 2003

WITH

CRIMINAL APPEAL No. 237 of 2003

WITH

CRIMINAL APPEAL No. 444 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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KANJIBHAI KACHARABHAI PATEL AND ANOTHER - Appellants
Versus
STATE OF GUJARAT - Opponent

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Appearance :

MR KJ SHETHNA for the Appellants in Criminal Appeal No. 236 of 2003.
MR JM PANCHAL for the Appellant in Criminal Appeal No. 237 of 2003.
MS HANSA PUNANI for the Appellant in Criminal Appeal No. 444 of 2003.
MS HANSA PUNANI for the Opponent in Criminal Appeal No. 236 of 2003.
MS HANSA PUNANI for the Opponent in Criminal Appeal No. 237 of 2003.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 22/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. As the common question of law is involved in all these appeals, they are heard together and disposed of by this common order.

2. The facts giving rise to the present appeals are as under:

The complainant, who was doing the agricultural work, is staying along with the three brothers – Kanjibhai, deceased Bhagabhai and Karsanbhai in Village – Sankhari. In the sim of Village: Sankhari, Bore (Tubewell) is situated at a place known as Jodanwala Aanta, which is of the joint ownership of all the brothers. It is alleged that by executing false stamp-paper, Kanjibhai removed the share of the complainant. Therefore, the complainant filed Civil Suit which is pending in the Civil Court. The Civil Court granted stay against Kanjibhai and prohibited his entry. On 21-09-2001, at about 11.30 Hours, the complainant went to his tubewell and at the

material point of time, his brother, Bhagabhai was present. Kanjibhai was armed with a stick while accused Nos. 2 and 3 were armed with dharias. They started beating the complainant and his brother Bhagabhai. Accused No. 1 gave stick blows on both the legs of the complainant while accused No. 2 gave dharia blow on the head of the complainant, as a result of which, the complainant fell down. Accused Nos. 2 and 3 gave successive blows of dharias on Bhagabhai. The complainant and his brother raised shouts and, therefore, Pravinbhai Ramjibhai Patel, Ramjibhai Vastabhai Patel, Nai Kachrabhai Nanabhai came to the rescue and saved the complainant and his brother from further beating. The accused, thereafter, fled from the scene of offence. The complainant and his brother were taken to the Patan Civil Hospital for providing immediate treatment. The brother of the complainant sustained dharia injury on the head and became unconscious. Therefore, he was transferred to Civil Hospital, Ahmedabad. The complainant, at the time of filing of the complaint, was undertaking treatment in Patan Government Hospital. It is also alleged that accused were having inimical terms with the complainant and his brother Bhagabhai and, therefore, they assaulted the complainant and his brother with stick and dharias and also gave threats to kill them. On the strength of the complaint of Joitaram, offences under Sections 307, 326, 323, 324, 504, 506 (2) and 34 of IPC were registered and after the death of Bhagabhai, the offences under Section 302 was added. When the matter came up before the learned Additional Sessions Judge,

Fast Track Court, Patan, he gave benefit of doubt after completion of trial to all the accused for the offences punishable under Sections 504, 506 (2) read with Section 34 of IPC. He also acquitted accused Nos. 1 and 2 for the offences punishable under Sections 307, 326 read with Section 34 of IPC.

3. The learned Judge after going through the entire gamut of oral deposition and documentary evidence produced by the prosecution imposed following sentences on the appellants (accused):-

(i) Accused No. 1 was sentenced to RI for 6 months and to pay fine of Rs. 250/-, in default, further SI of 1 month under Section 323; RI for 2 years and fine of Rs. 500/-, in default further SI for 2 months under Section 325; RI for 1 year and fine of Rs. 250/-, in default, SI for 1 month under Section 324 read with Section 34.

(ii) Accused No. 2 was sentenced to RI for 6 months and to pay fine of Rs. 250/-, in default, further SI for 1 month under Section 323 with Section 34 IPC; RI for 1 year and to pay fine of Rs. 250/-, in default, SI for 1 month under Section 324; and RI for 2 years and to pay fine of Rs. 500/-, in default, SI for 2 months under Section 325 read with Section 34.

(iii) Accused Nos. 2 and 3 were further awarded sentence of RI for 10 years each with a fine of Rs. 1000/- each, in default SI for 4 months under Section 304 Part I of IPC.

3. During the course of appeal filed by the appellants as well as by the State, the parties to the present appeals have amicably settled the matter. Therefore, the learned Advocates representing the appellants in both the matters have not challenged the validity of the order of conviction passed by the learned Additional Sessions Judge, Fast Track Court, Patan. In view of the aforesaid submissions by the learned Advocates for the rival parties, we also do not go into the merits of the matter.

4. Karsanbhai, uncle of accused, is ready to pay Rs. 5 Lakhs to Amthiben, widow of deceased Bhagabhai and Rs. 5 Lakhs to Madhuben, daughter of deceased in order to resolve the entire dispute between the family members. In view of the facts and circumstances of the case narrated hereinabove and considering the evidence on record of the case, we do no disturb the finding given by the learned Judge with regard to the imposition of sentence on the accused under various provisions of IPC. However, considering the settlement arrived at between the parties and since the amount of Rs. 10 Lakhs is to be paid by Karsanbhai on behalf of the accused in order to amicably settle the matter between both the parties, we consider it fit to impose the sentence on accused which they have already undergone in Criminal Appeal Nos. 236 of 2003 and 237 of 2003. A cheque of Rs. 5 Lakhs would be handed over to (i) Amthiben and (2) Madhuben.

5. We have heard learned Advocates Mr. Shethna,

Mr. J. M. Panchal and learned Additional Public Prosecutor Ms Hansa Punani at length and in great detail. Learned Advocate Mr. Shethna for original accused No. 1 submitted that Karsanbhai would also file an affidavit to the effect. Learned Advocate Mr. P. M. Thakkar, who was appearing for the original complainant in Criminal Revision Application No. 152 of 2003, has no objection if the settlement is arrived at between the parties.

6. With regard to enhancement appeal filed by the State against accused No. 1, it would stand abated because of the death of accused No. 1 during the pendency of appeal. However, the State has not preferred enhancement appeal against accused Nos. 2 and 3 and even notice of enhancement appeal, as per submission of the learned Advocate for appellants Nos. 2 and 3 was not received by them. Permission was sought by the learned Additional Public Prosecutor for amending the grounds in the appeal, but no such enhancement appeal has been filed against accused Nos. 2 and 3. Even if the State did prefer enhancement appeal under Section 377 of IPC, then it would have made the prayer to enhance the sentence imposed on accused Nos. 2 and 3 under Section 302 of IPC instead of Section 304 Part I. However, in view of the settlement arrived at between the parties and when the compensation of Rs. 5 Lakhs each is paid to the wife as well as daughter of the deceased, we consider it fit to award the compensation rather than the sentence of imprisonment or even enhancement of sentence. The Apex Court, in the case of **Baldev Singh And Another**

Vs. State of Punjab, (1995) 6 SCC 593, has held that in a family feud, which results in the death of the person, the award of compensation is more appropriate then the sentence of imprisonment under Section 357 (3) of the Code of Criminal Procedure. Considering the aforesaid ratio laid down by the Apex Court, we also consider it fit to award the compensation, as agreed by the rival parties rather than imposing the sentence of imprisonment.

7. For the foregoing reasons, we pass the following order:

ORDER

Criminal Appeal Nos. 236 of 2003 and 237 of 2003 are partly allowed. The appeal for enhancement of sentence i.e. Criminal Appeal No. 444 of 2003 preferred by State stands abated *qua* Kanjibhai Kachrabhai Patel i.e. original accused No. 1 – appellant No. 1 in Criminal Appeal No. 236 of 2003. The sentence imposed by the learned Additional Sessions Judge, Fast Track Court, Patan in Sessions Case No. 463 of 2002 on original accused Nos. 2 and 3 for a period of 10 years RI under Section 304 Part I is altered to one which they have already undergone under Section 304 Part I of IPC.

In pursuance of the agreement arrived at between the rival parties, Pay Order, prepared on behalf of the accused, bearing No. 42869 dated 20-10-2007 issued by the Kalupur Commercial Cooperative Bank Limited, S. M. Road Branch, Ahmedabad on account of SB

A/c No. 10136 Cheque No. 447488 drawn in favour of the Registrar, High Court of Gujarat, Sola, Ahmedabad for Rs. 10 Lakhs is directed to be deposited in the Registry of this Court. On receipt of the same, the Registry of this Court shall remit the amount to the Registry of the District Court, Patan. Thereafter, the Registry of the District Court, Patan shall disburse the amount of Rs. 10 Lakhs to the concerned parties after proper identification and verification by A/c Payee Cheque.

Original accused No. 3 – appellant No. 2 of Criminal Appeal No. 236 of 2003 i.e. Girish Kanjibhai Patel as well as original accused No. 2 - appellant of Criminal Appeal No. 237 of 2003 i.e. Patel Pravinbhai @ Popatbhai Kanjibhai are set at liberty forthwith, if their presence is not required in any other case. The rest of the order with regard to sentence and imposition of fine would remain the same. *Yadi* be transmitted to the Sabarmati Central Jail forthwith. *Muddamal* articles to be disposed of in terms of the observations made by the learned Additional Sessions Judge.

The above order shall take effect only after the depositing of Pay Order of Rs. 10 Lakhs, as referred to above, in the Registry of this Court.

[ANIL R. DAVE, J.] **[H. B. ANTANI, J.]**

/shamnath